Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1976

76-1012

ALLEN MANSFIELD,

Petitioner,

-vs-

SMALL CLAIMS COURT, LOS ANGELES JUDICIAL DISTRICT,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION ONE

ALLEN MANSFIELD
Petitioner in Pro Se
3928 Carmona Avenue
Los Angeles, California
90008

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INTRODUCTION

Petitioner, ALLEN MANSFIELD, respectfully prays that a writ of certiorari issue to review the judgment and

and opinion of the State of California Court of Appeal for the Second Appellate District, Division One, entered on August 26, 1976.

OPINION BELOW

The opinion of the Court of Appeal of the State of California, Second Appellate District, Division One is attached as Appendix A hereto.

JURISDICTION

On October 21, 1976, the California Supreme Court denied a hearing of the opinion of the Court of Appeal, Second Appellate District, attached hereto as Appendix C.

The jurisdiction of this court is invoked under Section 1257(3) of Title 28 of the United States Code.

QUESTIONS PRESENTED

Whether the California Small

Claims Act violates the Due Process Clause of the Fifth Amendment of the Constitution of the United States as applied by the Fourteenth Amendment to the State of California and whether the Act violates the Equal Protection of the Law Clause of the Fourteenth Amendment.

Further, the question is presented as to whether a citizen can waive these constitutional rights, and whether a waiver without the advice of legal counsel or without a clear statement that he is waiving these rights is valid.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution,

Article V:

> No person shall be held to answer for a capital or other infamous crime unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be

> subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

United States Constitution,

Article XIV:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This is a simple case that is typical of the many thousands being treated in a like manner each month in California. In addition, other states have similar laws dating back some 50

or more years. The Supreme Court of the United States has caused the states to bring up-to-date their archaic laws concerning attachment in Sniadich v. Family Finance Corp., 395 U.S. 337, 89 S.Ct. 1820, 23 L.Ed 2d 349 (1969) and subsequent cases. The California law concerning small claims is a similar archaic, discriminatory and unfair law needing review and updating. Basic and fundamental constitutional rights are involved. The facts and law are simple and indicate strongly and clearly the constitutional problem.

The Small Claims Act of California arbitrarily divides parties into two classes. The defendants are allowed to appeal and have a trial de novo in Municipal Court. The plaintiffs [See Appendix B, CCP Sec. 117j] have no rights./ They cannot appeal for any cause, even if the trial violated every ethical cannon of justice. There

is no compelling state interest for this classification, in fact no state interest at all. It is a denial of justice for all plaintiffs in California, and most plaintiffs are very ordinary people with very little knowledge of law, correct trial procedure, their legal rights or even of the fact that they may have lost forever a valuable right to collect money due by the res judicata effect. He may have blown the trial by his lack of knowledge but California gives him no further chance to correct the mistake. He has no right of appeal that is accorded to every other party to any California case.

The Court of Appeal in its decision relies upon a 48 year old case and considers only the problem of procedural rights, and a supposed waiver (foregoing these rights).

The challenge to the law is not on the basis of procedural rights. It is on the basis of substantive due process. These constitutional rights cannot be waived by some hidden clause on his complaint that has never been explained to him and in a situation where he automatically has no legal counsel. The Supreme Court in both criminal and civil cases has made it plain that basic rights can only be waived after an intelligent explanation and realization of what these rights are. An unknowing waiver is no waiver.

There has been no oral argument on this case either in the Superior Court of California, in the Court of Appeal or before the California Supreme Court. The notice of an opportunity to appear before the Court of Appeal arrived nine (9) days before the scheduled date and while the petitioner

was out of the state. It would seem that California has not bothered to look deeply into this plainly unconstitutional law that deprives thousands of plaintiffs of due process and equal protection each month.

The single case cited as authority may possibly have been good law in 1928 long before the great revival of due process rights in the 1950's and 1960's and before the great reform in due process rights in civil procedure represented by Sniadich (supra), but it is not good law today. The California Supreme Court has refused to consider this matter for 48 years. It is a matter of urgent consequence that needs review.

REASONS FOR ALLOWANCE OF THE WRIT

This is a simple matter, but an important one to thousands of very

ordinary people in California and many other parts of the United States. Any indication of denial of equity, justice, due process or equal protection breeds disrespect for the law. The unfortunate plaintiff who has never been to court before who walks out of a California Small Claims Court and suddenly finds he is out in the cold with no right of appeal, reconsideration, or a new suit realizes he has been had by a law that is discriminatory and unfair.

This court has long held that states must have some valid reason for classification of its citizens for discriminatory treatment. There needs to be a state interest in creation of discriminatory classes. Is there any valid reason for not treating plaintiff in the same manner as defendant? Does one have more rights than the other?

Is there any state interest in this classification? Does it serve any purpose?

It is not procedural due process that is complained of. It is substantive due process -- denial of basic constitutional rights. It is further not "equal protection of the law" to give one party a trial de novo before a competent court, and to leave the other party with no rights. There must be a court in the United States that will consider these questions. The plaintiff has exhausted all of his remedies with the exception of this petition. He is not presenting this appeal for any personal gain. It is merely an attempt to remedy a basic injustice in the law of a state that is normally jealous of the rights of its citizens.

This court decided in D.H.

Overmeyer Co. v. Frick Company, 405 U.S. 174, 31 L.Ed 2d 124, 92 S.Ct. 775 (1972) as follows:

> "There can only be a waiver of due process when voluntarily, intelligently and knowingly made."

The present case shows a failure to meet these standards. The only communication to the plaintiff is the complaint which is typed by a clerk in the Small Claims Office. Generally the plaintiff is not given this in advance, but just tells the Clerk his claim and is told to sign. He has no attorney. He does not realize the right he has waived. He does not know that the defendant has greater rights than he does.

Further, can a waiver be made of a basic constitutional right. Could a defendant be made to waive the right of trial by jury in a criminal trial

in order to utilize certain courts of the state system. If he wanted a speedy trial could he be made to waive this right.

CONCLUSION

Wherefore, petitioner prays for a writ of certiorari to examine the issue of whether the Small Claims Act of California is a violation of due process and of equal protection of the law and whether these rights are voluntarily, intelligently and knowingly waived by plaintiffs in these cases.

ALLEN MANSFIELD
Petitioner in Pro Se

Not for Publication

IN THE COURT OF APPEAL

OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

ALLEN MANSFIELD,	)	2d Civil No. 48777
Petitioner and Appellant,	)	(Sup.Ct.No. C153697)
-vs-	)	
SMALL CLAIMS COURT, LOS ANGELES JUDICIAL DISTRICT,	)	Court of Appeal Second Dist. FILED Aug. 26, 1976 Clay Robbins, Jr., Clerk
Respondent.	)	

Appeal from a judgment of the Superior Court of Los Angeles County. Arthur L. Alarcon, Judge. Affirmed.

Allen Mansfield, in propria persona, for Appellant.

John H. Larson, County Counsel, and Jeffrey M. Hausman, Deputy County Counsel, for Respondent.

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This is an appeal from a judgment of the Superior Court denying a writ of mandate to set aside a small claims judgment adverse to petitioner who filed the small claims action as plaintiff. Appellant-petitioner contends the small claims statutory scheme of California (Code Civ. Proc.,Sec116-117r): (1) denies equal protection of the law because a defendant may appeal an adverse small claims determination and obtain a trial de novo while a plaintiff may not; and (2) existing small claims procedure denies procedural due process by reason of the informal methods of trial and the unavailability of discovery. The contentions lack merit.

Petitioner's contention of denial of equal protection by reason of the unavailability of appeal to a small claims plaintiff has been addressed by our Supreme Court. Reasoning that small claims

procedure is initiated by a plaintiff who, if he wishes, may elect to file an ordinary action while a small claims defendant has no such election, our high court held that a rational distinction exists so that the grant of the right of appeal to a small claims defendant is not a denial of equal protection to a small claims plaintiff. (Superior Wheeler C. Corp. v. Superior Court (1928) 203 Cal.384.) The Supreme Court precedent controls us in the case at bench.

Parity of reasoning dictates rejection of petitioner's contention of denial of procedural due process. The procedural rights which petitioner claims he was denied were available to him but for his election to file his action in the small claims court. That election was a voluntary one and carried with it the substantial advantages of the simplified small claims process. Having elected to

forego the procedural rights that would have been available had he filed his action within the non-small claims jurisdiction of the municipal court, petitioner cannot here complain that he was denied procedural due process. It was petitioner's election and not the operation of law which denied him the rights.

The judgment is affirmed.

Not for Publication.

THOMPSON, J.

We concur:

LILLIE, Acting P. J.

HANSON, J.

§ 117j. [Appeals]

The judgment of said court shall be conclusive upon the plaintiff. If the defendant is dissatisfied, he may appeal to the superior court of the county in which said court is held. He shall pay, for filing the papers in the superior court, the same fee as is charged and collected on the appeal of a civil action from a justice court, and if final judgment is rendered against him in such superior court, then he shall pay, in addition to said judgment, an attorney's fee to the plaintiff in the sum of fifteen dollars ($15). No fee shall be charged in the superior court upon the filing of any document or paper by the plaintiff in a small claims action.

On appeal the action shall be tried anew. The practice and procedure on appeal and the time and manner in which records on appeal shall be made up and filed shall be prescribed in rules adopted by the Judicial Council.

If the plaintiff in a small claims action is a corporation, the plaintiff shall be entitled to appear and defend in the superior court on its own behalf and without the representation of an attorney.

Amended Stats 1975 ch 266 § 2, ch 990 § 2.

Amendments:

1975 Amendment: Substituted the third paragraph for the former third paragraph.

5 Cal Jur 3d Appellate Review §§ 664, 668, 673, 816, 818, 827, 841, 842, 851, Courts §§ 106, 112.

55 Ops Atty Gen 214 (defendant in an unlawful detainer proceeding not required to file bond in order to perfect appeal from judgment in favor of plaintiff in that action).

2. Constitutionality

The requirement, as a precondition to an appeal from a small claims court judgment, of an undertaking, as prescribed by Code Civ. Proc., § 117*l*, or of a deposit in lieu of such undertaking, as prescribed by Code Civ. Proc., § 117*ll*, is unconstitutional as constituting a taking of property without a due process hearing with representation by counsel. Brooks v Small Claims Court (1973) 8 C3d 661, 105 Cal Rptr 785, 504 P2d 1249.

Appendix B

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING

SAN FRANCISCO, CALIFORNIA 94102

OCT 21 1975

I have this day filed Order HEARING DENIED

In re: 2 Civ. *No.* 48777

Mansfield

vs.

Small Claims Court, Los Angeles Judicial Dist.

Respectfully,

G. E. BISHEL
Clerk

42838-677 8-76 3M OBP

APPENDIX C